COMMITTEE REPORT NO. 8 - 1 4 (5) TABLED ON JUN 1 3 2002

14th Legislative Assembly of the Northwest Territories

Standing Committee on Accountability and Oversight

Report on the Review of the Access to Information and Protection of Privacy Commissioner's Annual Report 2000/2001

Chairperson: Mr. Charles Dent

Northwest Territories Legislative Assembly
Standing Committee on Accountability and Oversight

JUN 13 2002

THE HONOURABLE ANTHONY (TONY) WHITFORD, MLA
SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Accountability and Oversight has the honour of presenting its Report on the Review of the Access to Information and Protection of Privacy Commissioner's Annual Report 2000/2001, and commends it to the House.

Charles Dent

Charles Dent, MLA
Chair

P.O. Box 1320
Yellowknife
Northwest Territories
X1A 2L9
T: (867) 669-2299
F: (867) 873-0432
www.assembly.gov.nt.ca

STANDING COMMITTEE ON ACCOUNTABILITY AND OVERSIGHT

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Chair

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Director, Research and Library Services

Donna Huffam
Committee Researcher

Jacqueline McLean
Committee Coordinator

Review of the Access To Information and Protection of Privacy Commissioner's Annual Report 2000/2001

BACKGROUND

The Legislative Assembly of the Northwest Territories enacted its first *Access to Information and Protection of Privacy Act* on December 31, 1996. The stated intention of the Act is to "promote, uphold and protect access to the information that government creates and receives and to protect the privacy rights of individuals".

The Information and Privacy Commissioner is an independent officer of the Legislative Assembly, but is required under Section 68 of the *Access to Information and Protection of Privacy Act* to prepare and submit an Annual Report on the Commissioner's activities to the Legislative Assembly. Ms. Elaine Keenan-Bengts was re-appointed as the Northwest Territories' Information and Privacy Commissioner on July 1st, 2000 and will serve a 5-year term.

The *Access to Information and Protection of Privacy Act* provides the public with a means of accessing the information that government collects through its departments and various regulatory bodies. The legislation was also designed to place restrictions on the disbursal of certain information in order to protect the privacy rights of individuals. The Act also gives individuals the right to see and make corrections to the information about themselves.

THE STANDING COMMITTEE REVIEW

The Standing Committee on Accountability and Oversight met with the Access to Information and Protection of Privacy Commissioner, Elaine Keenan-Bengts, on March 6, 2002 to review the Commissioner's Annual Report for the year 2000-2001.

DEEMED ACCEPTANCE/REFUSAL WITHIN THIRTY DAYS AMENDMENT

During her opening comments the Commissioner referred to her 1999/2000 Annual Report suggesting that an amendment be added to the *Access to Information and Protection of Privacy Act* specifying that the head of a public body would be deemed to have accepted the Commissioner's recommendation if that public body had not responded within thirty days.

The Accountability and Oversight Committee did not agree with the Commissioner's recommendation at that time and instead suggested an amendment stating that the head of a public body would be deemed to have refused the Commissioner's recommendation if that public body has not responded within thirty days.

The government agreed with the Committee and is currently drafting an amendment for a deemed refusal clause.

The Standing Committee re-considered the issue given the Commissioner's concerns, however, ultimately decided that the deemed refusal clause was a more appropriate action for the government to take. The Standing Committee will review the amendment for a deemed refusal clause once it is presented by the government.

RECOMMENDATIONS FROM THE ACCESS TO INFORMATION AND PRIVACY COMMISSIONER'S 2000-2001 REPORT

The Inclusion of Municipalities as Public Bodies Under the Current Act

The Commissioner noted in both her annual report and at the public review that tax-based communities currently have no legislation regulating the release of names, addresses or other private information on web pages or in other public documents. Municipal officials from both Yellowknife and Hay River have identified this as a serious concern.

The Standing Committee noted that the matter was referred to the Department of Justice. The Committee has sent a letter asking for the Department's opinions on this issue and awaits its reply.

In the meantime, the Standing Committee fully supports the Commissioner's recommendation that municipalities be included under territorial access to information and the protection of privacy laws. The Commissioner suggests that either new legislation should be drafted to deal with municipalities or municipalities should be included under the current legislation. The Standing Committee is willing to review either option at the government's earliest convenience.

Canadian Territories Considered "Federal Works"

The Commissioner pointed out that new federal legislation titled *Personal Information and Electronic Documents Act* that regulates the collection, storage and use of personal information in the private sector will come into full force on January 1st, 2004. As of January 1st, 2001 this legislation came into effect for "federal works" and for companies who transfer information over provincial/territorial borders.

The Federal Privacy Commissioner considers the Northwest Territories, Yukon and Nunavut as being "federal works" under the Act and therefore the Federal Commissioner has now taken on the responsibility of investigating all complaints made in this area.

The NWT Access to Information and Protection of Privacy Commissioner would like to see the establishment of territorial legislation in order to avoid having local issues handled by a federal body.

The Standing Committee noted that despite a letter from all territorial Justice ministers questioning the Federal Privacy Commissioner's interpretation of "federal works" the Federal Commissioner has refused to alter his opinion.

Recommendation

The Standing Committee on Accountability and Oversight recommends that the Government of the Northwest Territories establish legislation in order to avoid federal jurisdiction in the area of privacy and access laws that pertain to the regulation, collection, storage and use of personal information in the private sector here in the Northwest Territories.

Regulation of Private Health Industries

The Commissioner is concerned that while publicly run health bodies are subject to the *Access to Information and Protection of Privacy Act*, other private health companies such as pharmacists, dentists, chiropractors, etc are not. Given concerns about the practice of companies selling health information to drug manufacturers and potential invasion of privacy issues the Commissioner would like to see legislation enacted similar to the *Health Information Act* of Alberta. This legislation regulates the practices of all public and private health organizations and companies in respect to the release of information, among other issues.

The Standing Committee agrees that there is a need to protect the public from disclosure of health information by private health care companies. This legislated protection should either be included under the current Northwest Territories Access to Information and Protection of Privacy legislation or should be a part of a new law designed to protect NWT citizens.

Recommendation

The Standing Committee recommends that the Government investigate the possibility of either expanding the current *Northwest Territories Access to Information and Protection of Privacy Act* or establishing new legislation to protect NWT citizens from the disclosure of personal information by private health care companies.

The Committee wishes to express its thanks to the Information and Privacy Commissioner, Ms. Elaine Keenan-Bengts, for her continued cooperation and attendance at our review of her 2000/2001 Annual Report.